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UNITED STATES OF AMERICA.

POLITICAL OPINIONS IN

1776 AND 1863:

A LETTER TO A VICTIM OF

ARBITRARY ARRESTS

AND

“AMERICAN BASTILES.”

Sidney Cromwell

“Written constitutions sanctify and confirm great principles, but the latter are prior in existence to the former. The Habeas Corpus Act, the Bill of Rights, the Trial by Jury, are surer bulwarks of right and liberty than written constitutions. *The establishment of our free institutions is the gradual work of time and experience, not the immediate result of any written instrument.*”—DANIEL WEBSTER.



NEW YORK:
ANSON D. F. RANDOLPH,
683 BROADWAY.
1863.

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ARBITRARY ARRESTS.

TO MR. FRANCIS KEY HOWARD:

Sir,—You were one of the first to suffer military arrest and imprisonment after the outbreak of the present most deplorable war—a war brought on by the machinations of desperate and disappointed men, for the ruin of our country and the destruction of our liberties. After a detention of fourteen months, during which you suffered much privation and discomfort, you were discharged, without trial, by order of the Secretary of War; and you at once availed yourself of your freedom to make public complaint and protest against this extraordinary treatment of a citizen of this Republic. In this you were sustained by all of your sort, and particularly by the bought apologist of treason in this city. I therefore address to you some remarks which I propose to make upon this momentous subject of arbitrary arrests and “American Bastiles,” to which recent events have given new importance. The position in which you were publicly placed by your own acts and those of the Government must be my excuse for this use of your name. The opinions and statements which you have printed and published are, of course, open to public comment, without apology.

You were arrested, not at the mandate of any court of law, but simply by the order of the President,

through one of his Secretaries; and you assert that this was done merely because of your "political opinions," and when you were "guiltless of any offence whatever." A graver case could not be presented to the consideration of the people. For if, at a time when he was bound by the letter of the law, the President transcended the letter of the law, to arrest a citizen, who was guiltless of any offence, and because of his mere opinions upon *politics*, he must be impeached and deposed, or our liberties are on the high-road to extinction. How guiltless you were, and how entirely the opinions which you allege as the occasion of your arrest were confined to politics, your fellow-citizens are, fortunately, able to judge by the preface to your narrative; and, if the wicked and slothful servant could not complain that he was judged out of his own mouth, surely so good and true a citizen of the Republic, and so devoted a defender of lawful liberty as you have been, may well rejoice at a like judgment. Upon the third and fourth pages of your pamphlet are these paragraphs:—

"Up to the time when the dissolution of the Union became, to most intelligent men, a *patent fact*, the people of Maryland had unanimously desired and striven for its perpetuation. Though they feared that the aggressive principles and growing power of the Republican party would, before many years, bring about a separation of the two sections of the country, and though they believed that the conduct of Mr. Lincoln and his party *justified the action of the South*, they still hoped and labored for the maintenance of the Union."

* * * "When all these hopes were disappointed by the action of Northern men, and especially when Mr. Lincoln, on his accession to office, appointed some of the most extreme partisans to high office at home and selected others to represent the country abroad, and gave ample evidence of his incapacity to understand the questions at issue, and of his determination neither to *conciliate* the Southern people nor to deal with what *he called* the

"rebellion" according to the mode provided by the Constitution and laws, then a large proportion of the people of Maryland expressed their sympathy for the South, and their conviction of *the justice of its cause*. They then asserted that the conquest of the South was an impossibility, *that the Union was, in point of fact, dissolved*, and they insisted that, in such case, the people of the state had the *right to decide their own destiny for themselves*."

It appears from these passages that you are one of a certain number of men, of whom some are in Maryland, where they shoot their fellow-citizens who are on their way to Washington by order of the President, and others in Missouri where they do likewise, others in the States south of Mason and Dixon's line where they fight the armies of the Republic in the open field, and others in Connecticut, New York City, New Jersey and Ohio, where they do all in their power to help their Southern brethren. The persons, of whom you are one, think, according to your own statement above quoted, that previous to the date of your arrest, September 13th, 1861, the dissolution of the Union was "a patent fact;" that at that time it was, "in point of fact, dissolved;" that "the conduct of Mr. Lincoln and his party" "justified the action of the South," or, as you again express it, produced a "conviction of the justice of its cause;" that it was the duty of the President to "conciliate the Southern people," and to "deal with what *he called* the rebellion" according to certain views of the Constitution, which would have prevented his dealing with it at all; and that, under these circumstances, the people of Maryland, and consequently of any other commonwealth which is a component part of the Republic, "had the right to decide their own destiny for themselves."

Now, if in September, 1861, the Union was, in point

of fact, dissolved, it was so dissolved solely by the action of certain people who had, in one way or another, obtained the control of affairs in eleven of the thirty-three states of the Union, and who defied its constitutional government. For neither by the supreme constituted legislative authority of the Union, nor by the people of the Union themselves, had there been any action on that subject whatever. And if the conduct of Mr. Lincoln and his party justified the action of the South and gave them a just cause, then the conduct of private citizens and political conventions justifies the destruction of any government; for the action of these people who obtained control of the states in question, and in your view dissolved the Union, was taken and perfected, as far as it was in their power to perfect it, before Mr. Lincoln came into office, and even before he had an opportunity of showing or declaring what would be the policy of his administration. And if Mr. Lincoln should have conciliated the Southern people, so-styled, or have dealt with "what he called" the rebellion in a manner so exceedingly constitutional as to prevent him from dealing with it at all; and if, because he did not then so deal with it, the conquest of the South, so-called, became an impossibility, the Union, in point of fact, dissolved, and the people of every commonwealth invested with the right to decide their own destiny for themselves; then the people in any single state may, at any time and for any cause, repudiate their national obligations, defy the national authority, demand with arms in their hands that they shall be conciliated or dealt with in so constitutional a manner that they shall not be dealt with at all; and upon this the Republic is resolved again into its political elements, and the people in any quarter of it may set themselves

up as a nation at their own sweet will. And these, O blameless man, and void of offence, you call political opinions. Which, indeed, they are, and of a very extraordinary sort. So would it be a political opinion to maintain that the people in Louisiana and Florida might restore those states respectively to France and to Spain, or that those in Vermont might return to their allegiance to the crown of Great Britain—that, if they chose to do so, their cause would be just, and they should be conciliated—and that, if they did do so by declaration, and took up arms, the Union would thereby be dissolved and the people in each of the other states acquire the right to decide their own destiny for themselves. These political opinions are exactly those which are held by certain devoted and faithful citizens of the Republic, who once, like you, were guiltless of any offence—Jefferson Davis, Robert Toombs, and Louis Wigfall. Nay, even David L. Yulee holds these political opinions—he who sat in the Senate Chamber taking part in the National Government, drawing his pay from its Treasury, while he was plotting against it, sitting there meanwhile for the avowed purpose of crippling it, and using his very senatorial frank to convey particulars of the plot to a fellow conspirator. He, too, like you, was then guiltless of any offence whatever; for he had not levied war against the United States, or been present, giving aid and comfort, on any occasion when such war was levied. Immaculate legislator! immaculate citizen! Brothers in patriotism, if not rivals in honor! Equally worthy of protection under the shield of the Constitution! If you, guiltless man, with Fernando Wood, and Benjamin Wood, and Clement L. Vallandigham, all Honorable, and all equally guiltless, could only put your political opinions in practice, which you

all are trying to do, Jefferson Davis, and Robert Toombs, and Louis Wigfall, and David L. Yulee would see their political opinions in the ascendant. The Union *would* be, in point of fact, dissolved; the people in every state *would* decide their own destiny for themselves; the just cause of slavery, daintily styled the South, would triumph, and what the President, and Congress, and the overwhelming majority of the people in twenty-two states of the Union now call the rebellion would have to be conciliated.

But you do not put these political opinions in practice; you only utter them, and therefore you claim to be guiltless. Listen! You do not act upon these precious opinions, merely because you can not; and you utter them, hoping to bring about such a condition of things that, by the help of Mr. Davis and the men who are sustaining his just cause, you may act upon them speedily. This you say is not a violation of any law, and your arrest and imprisonment therefor is altogether without precedent. Your former condition as a "political prisoner" you call "novel." You are right. But, Sir, have you and those with whom you are in active sympathy not yet discovered that the state of this country is novel, and that new facts and new conditions require new modes of action, and so, new names? These are times which make laws unto themselves, and in which precedents are not followed, but set up. This country, because of the course taken by the defenders of the just cause of slavery (white and black,) which is sometimes called "the South," is passing through a great and fundamental political revolution, which involves all parts of it and which changes the political attitude,

curtails the personal privileges, and enhances the political duties of every one of its citizens. As well might you set a municipal ordinance, or the right of every man to the quiet of his home, in the way of the fire department when a conflagration is raging; as well might you proclaim to the Mississippi, rushing through its riven banks, that by the law of a "sovereign" state it had been confined within certain limits, as attempt to stay the forces which are now in operation throughout this land, in every corner of it, by a paper constitution and a formal precedent.

Yet it was decreed that we should not be without some precedent in this extremity; and, fortunately for us, this precedent was set by so illustrious, and pure, and wise a man as GEORGE WASHINGTON. The evidence of it exists under his own hand and in the records of our Continental Congress.

Throughout our struggle for the rights of freemen, which in the end became a war for independence, there were certain men who, in the words of the accurate and cautious historian of our Constitution,* "from a [mistaken] sense of duty, or from cupidity, or from some motive good or bad, made their election to *adhere to the public enemy*; and they were, therefore, *rightfully classed*, according to their personal activity and importance, *among the enemies of the country*, by those whose business it was to conduct its affairs and fight its battles." These people were most active and, proportionably, most plentiful in South Carolina—the first state to declare for the "just cause" of slavery, otherwise called the South, with which you and certain other of the people in Maryland expressed your sympathy.

* George Ticknor Curtis, more widely known as a prominent member of the Society for the Diffusion of Political Knowledge.

But they existed all over the country ; and there were many in Queen's County, Long Island. Now, in January, 1776, this George Washington, then general-in-chief of our forces, took very outrageous, if not unprecedented, measures against these people, who were then most wrongfully styled tories and traitors. For they only held certain "political opinions," and even more than you and Clement L. Vallandigham, were they guiltless of any offence whatever. For they did not actively and openly oppose the war. They were only "suspected of designs unfriendly to the views of the Congress." The evidence of this was not what they did, or even what they said, but (Hear and avenge it, spirit of outraged Liberty!) what they did not do. They refused to elect members to the Provincial Convention ! So, thereupon, this George Washington, and this convention or congress, in which were Jefferson, and Hamilton, and Franklin, and Adams, and Hancock, and King, and Wolcott, and Livingston, and Morris, and Carroll, and Henry, and Randolph, and Pinckney, and Rutledge, determined, independently of each other, to send a military force into Long Island. The troops entered at points both east and west of Queen's County, and, marching inward, they, horrible to relate ! forcibly entered the houses of these blameless people, who merely held certain political opinions, and disarmed every one—who defied the authority of Congress ? who was in arms to resist it ? who was giving material aid and comfort to the enemy ?—no, sad to tell, they "disarmed every inhabitant who had voted against choosing members to the Convention." They disarmed them all, and arrested many, and sent nineteen of the most prominent—to the county jail, of course, to be tried according to law, and in the district,

or at least the province, in which the crime was committed. Woe be to their memory, no! They sent their guiltless victims actually out of the county, and (Hear it, priests and prophets of the mysteries of state sovereignty!) out of the province—even to Philadelphia, the seat of the tyrannical government. This was done, too, to men covered by the ægis of the first Great Charter of our liberties, which declares that no freeman shall be imprisoned, or banished, or put to death, except by a jury of his peers, and who were protected by the yet more comprehensive Bill of Rights, while we were fighting for those rights as Englishmen. This was done before the Declaration of Independence, and even before the first Confederation. It was done in defiance of those great principles of liberty which our forefathers in England established, and which, in the language of Webster, our Constitution could only “sanctify and confirm.” For, as he wisely added, “the Habeas Corpus Act, the Bill of Rights, and the trial by jury are surer followers of right and liberty than written constitutions.”

Let us look at the reasons assigned for this monstrous violation of personal liberty and the right of free speech, which has not since been rivaled here, not even in the cases of yourself and the Member of Congress from Ohio. The Provincial Congress, setting forth that the majority of the inhabitants of Queen’s county having avowed a design of remaining inactive spectators of the contest, and shown a general want of public spirit, declared that “*those who refuse to defend their country should be excluded from its protection and be prevented from doing it injury.*” Congress then passed an Act providing that all these men should be put out of the protection of the United Colonies, that all trade and inter-

course with them should cease, that any attorney or lawyer who should prosecute or defend any suit at law for any one of them, should be treated as a public enemy. Thus these men, guiltless, like you and Clement L. Vallandigham, nay, less guilty of any offence whatever, were, for their "political opinions," formally outlawed. And by the orders of George Washington, who was then, be it remembered, not in Long Island, but in Massachusetts, they would have been arbitrarily arrested and imprisoned in some "American Bastile," if it had not happened that they were previously arrested by direction of the Congress.* Washington, that despotic foe of personal liberty, justified his violation of Magna Charta and the Bill of Rights by his most extraordinary plea: "Our enemies from the other side of the Atlantic will be sufficiently numerous; *it concerns us to have as few internal ones as possible.*"* The immediate occasion of his order was an apprehended movement of the British forces from Boston upon New York; and General Washington, who had some knowledge of human nature as well as of arms and of State affairs, supposed that the plans of the public enemy might be furthered by the presence of these guiltless men who held the political opinions aforesaid. In fact, he seems to have thought that they would act just as you and certain others of the people of Maryland would have acted, if our public enemy had entered Maryland, as it was reasonably expected that he would, about the time of your arrest; and as he did about twelve months afterward, but went bootless back again, because you and the like of you had been arbitrarily thrust into "American Bastiles," without trial in your

* See the Journals of Congress for January 3d, 1776, and the Writings of Washington, Vol. III., pp. 230 and 255.

district, and for a crime unknown to the law. But the Congress acted, as we have seen, on the general principle that, in circumstances of extreme moment, those who refuse to defend their country should be excluded from its protection and prevented from doing it injury. Congress was finally obliged to leave for a while these guiltless people who adhered to the public enemy to be dealt with by the authorities of the commonwealths in which they lived ; but that, in the words of the historian of the Constitution, was not because Congress had not performed "a high act of sovereignty which was entirely within the true scope of its own powers," but because "it had not finally severed the political tie which had bound the country to Great Britain, and because it had no civil machinery of its own through which its operations could be conducted." But now those disabilities do not exist ; and the Congress of this country, by its civil, or, if necessary, its military machinery, can, in the performance of a high act of sovereignty, make such disposition of those who, from a sense of duty, or from cupidity, or from some motive good or bad, adhere to the public enemy, as is demanded by the public safety. The people will hold them to a stern reckoning for any needless violation of freedom of speech and personal liberty ; but in the present extremity of the country they will hold them to a reckoning yet sterner for any neglect to maintain or defend the Republic.

For the question now put to the arbitrament of war, and which only war can settle, is whether the nation, for the formation and preservation of which your Maryland grandfather, Francis Key, thanked the Almighty in the patriotic song* to which you refer with such par-

* "Praise the Power that hath made and preserved us a nation."

donable pride, shall be preserved again and forever by passing triumphantly through this its last and its supreme trial, or whether it shall be shivered into feeble and jarring fragments. If you can doubt which of these alternatives the people of this country have chosen, if you can suppose for a moment that they will allow the personal liberty and temporary comfort of you, or me, or a hundred or a thousand others to stand in the way of the preservation of the nation, you are a fit tenant for that sort of Bastile in which despotic men in their vulgar senses arbitrarily imprison high-toned lunatics.

You complain of your sufferings, your lodging, and your fare; you whine in all the moods and tenses, and vex every accessible officer of the Government because you had "nothing but the ordinary rations of the soldier, which are of the coarsest kind," because "the dinners consisted of fat pork and beans, a cup of thin soup and bread, or of boiled beef and potatoes, and bread on alternate days:" atrocious treatment, indeed, of a man guiltless of any offence whatever except the advocating of certain political opinions—those opinions being, that the cause of the slaveholding rebels, called the South, is a just cause, that the Union is and ought to be dissolved, and that the people in every State have a right to obey or defy the national government at their pleasure. But, sir, there are hundreds of thousands of men who, for two years, have lived on these rations of the common soldier; who, while enduring fatigue and braving the elements, and wounds and death at the hands of the supporters of that just cause of which you speak, have been glad to get those dinners of pork

and beans, and beef and potatoes, and bread, which so offended your high stomach, and who cannot supply themselves with other fare at "one dollar per day," as you were allowed to do; and who have not been regaled with presents of "pheasants, chickens, tongues, pies, and other delicacies," as you admit that you were, and to which you say (and I believe you) that a certain Mr. Warfield and yourself "consented, or perhaps, volunteered, to take under your especial charge,"—the only volunteering to which you, or, in spite of his name, Mr. Warfield, seem to have been inclined. Now do you think that the people of this country will weep much because you, who have seen fit to adhere to the public enemy, lived for fourteen months, or should live for fourteen years, upon the best fare which the nation can afford to those who are giving up their lives in defence of the country against that public enemy? If so, the best thing you can do is to go across the line, step into the ranks of that enemy, and then perhaps the nation may find means to send you speedily to paradise itself—for a man so innocent as you are could not of course go elsewhere. But do not expect to be allowed to stay here and devote yourself to making the task of the public enemy easy. While we are spending blood and money like water, while our brothers suffer hardships, wounds and death, and our mothers mourn, and yet *will* be comforted, because their sons have fallen in the service of their country, while we are in a death struggle to preserve this republic from disintegration, and this government from destruction, for the sake of the perpetuation and propagation of human slavery, do not deceive yourself for a moment with the notion that we are so bereft of common sense as to allow any law or privilege to give you security while you strive to cut

short our resources, diminish our armies, and thwart our leaders, and thus serve, a thousand fold more than if you opposed us in the field, the purposes of the public enemy. Words are weapons in civil war.

But are you not to be allowed to express your political opinions? have you not a right to the protection of the law, and the Constitution, and the Bill of Rights and Magna Charta? Without a doubt. In all the ordinary and civil affairs of life your rights are unchanged, and you may discuss the politics of the country and criticize the measures of the government to your heart's content. That is a privilege which we all claim, and all exercise; which the government has no right to restrain, and which it does not restrain. For since this war broke out, how many of us, with voice and pen, have ceaselessly criticized and protested against its measures:—its Emancipation Proclamation, weak, unwise, incapable of good, capable only of harm, consolidating the rebels and nerving them with fiercer hate, dividing and enfeebling the loyal, not taking by its own power one man, slave or free, from the public enemy, but repelling many from the nation's ranks:—against its displacement of Generals who were serving it as well as possible under the circumstances in which they were placed; against its miserable prevarications about the results of our campaigns, its distrust of the people, and its feeble fumbling with our neutral foes. This we have done, and this we shall do openly and publicly, and there is none to molest or make us afraid. But while we have done thus, and you might have done thus, with impunity, there is one course of conduct that, if we are of enough importance to be worth attention, we can-

not pursue unmolested: we cannot "adhere to the public enemy." When we do that, our safety and our rights must yield to the safety and the rights of the nation. We may show this adherence as those much abused tories and traitors of Queen's county did in 1776, by refusing to elect delegates to a convention, by avowing "a design of remaining indifferent spectators of the contest," by "a general want of public spirit," or by declaring the Republic destroyed, its government at an end, and any efforts to preserve the one and maintain the other, "attempts to build up a monarchy upon the ruins of our free government,"* and to "establish a despotism in this country more cruel and despotic than ever existed before,"* or by pronouncing the cause of the public enemy "a just cause." We may show our adherence in these or in other ways, but when we do so adhere to the public enemy, and our adherence becomes a help to him, a hindrance to our armies, and dangerous to the Republic, then we must expect to hear, in the words of Benjamin Franklin, and Thomas Jefferson, and John Adams, and Rufus King, and Charles Carroll, and Edmund Randolph, and Charles Pinckney, and John Rutledge, that "those who refuse to defend their country should be excluded from its protection, and prevented from doing it injury." Then we shall find that those who conduct our affairs and command our armies, if they have a grain of sense, and a spark of resolution, or one touch of that terrible earnestness which the desperation of their cause has given to the leaders of what is "called the rebellion," will act upon the judgment of George Washington, that "the enemies of the country are sufficiently numerous on the other side of the Potomac, and that it is im-

* Speech of Clement L. Vallandigham at Dayton, Ohio.

portant to have as few internal ones as possible." Will act upon it? must act upon it; if not by virtue of constitutions, and bills of rights, and magna chartas, then, in spite of them, as he did, and in virtue of a greater charter—the preservation of this republic, the safety of this nation, itself the living charter of final freedom to all mankind. This will be done and must be done, not because we are at war, and therefore deprived of some of the rights of peace, but because we are at war, not with another nation, but among ourselves. The determination of the slaveholders to resist the progress of Christian civilization, has forced upon us a fundamental revolution. The question now is, not one about political opinions or the construction of the Constitution, but which is the stronger, this republic or its enemies, the spirit of liberty or the spirit of slavery. There was a time when an abolitionist newspaper like *The Tribune*, might guiltlessly, but most unwisely, avow itself in favor of a peaceful severance of the Union by the same authority which formed it—the people of the United States. But that time has gone past. There is now an enemy which is attempting to sever the Union in spite of that authority, and by the sword; and whoever adheres to that enemy must, in so far as it is worth the trouble, himself be treated as a public enemy. Nor is this a quarrel to be made up by the laying down of arms and a return to the old position. This the slaveholders know. From the beginning they have seen that they must conquer or submit. The enemy which brought this calamity upon the nation must and will not only be conquered but extinguished. This enemy is slavery. Slaves may be held for a time in certain States, in spite of this revolution; but slavery, as a political power, must be destroyed forever. Not more

true was it in 1776 than it is in 1863, that old things have passed away and all things have become new.

Your fellow-citizen, and, as you act, your friend or
your enemy,

SIDNEY CROMWELL.

NEW YORK, May 23, 1863.

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“AMERICAN BASTILES.”

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D. C. M. W.
“Written constitutions sanctify and confirm great principles, but the latter are prior in existence to the former. The Habeas Corpus Act, the Bill of Rights, the Trial by Jury, are surer bulwarks of right and liberty than written constitutions. *The establishment of our free institutions is the gradual work of time and experience, not the immediate result of any written instrument.*”—DANIEL WEBSTER.

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